(1)

83-2037

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FILED
JUN 12 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No.

CITY OF LAMBERTVILLE
Appellant

v.

LAMBERTVILLE POLICEMEN'S ASSOCIATION
Respondent

ON APPEAL FROM THE NEW JERSEY SUPERIOR COURT (APPELLATE DIVISION)

JURISDICTIONAL STATEMENT

Joseph F. Shanahan
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Date: 11 June 1984

35 pp

QUESTION PRESENTED

Whether the decision of the Superior Court of New Jersey (Appellate Division) affirming the ruling of the New Jersey Public Employment Relations Commission is erroneous in that it contravenes Article 1, Section 10 of the United States Constitution ?

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

No.

CITY OF LAMBERTVILLE, Appellant

v.

LAMBERTVILLE POLICEMEN'S ASSOCIATION,
Respondent

ON APPEAL FROM THE NEW JERSEY
SUPERIOR COURT, APPELLATE DIVISION

JURISDICTIONAL STATEMENT

Appellant appeals from the final order of the New Jersey Superior Court, Appellate Division, dated 7 December 1983 and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

A petition for certification of the judgment of the Superior Court of New Jersey, Appellate Division was denied by the Supreme Court of New Jersey on 19 March 1984 and appears in the appendix hereto at Appendix A.

The decision of the Superior Court, Appellate Division dated 7 December 1983 appears in the appendix at Appendix B.

The decision and order of the New Jersey Public Employment Relations Commission appears in the appendix at Appendix C.

JURISDICTION

This is an appeal from an order of the New Jersey Superior Court, Appellate Division, dated 7 December 1983, granting a motion for summary disposition made by the New Jersey Public Employment Relations

Commission as a party at the next level of appeal from its own decision and order, dated 16 August 1983, and affirming the action of the Public Employment Relations Commission for the reasons stated in that agency's decision and order. Such decision is violative of Article 1, Section 10 of the United States Constitution relative to a State impairment of the obligation of contract.

The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by U.S.C. Sec. 1257(2). The following decisions sustain such jurisdiction to review: Largent v. Texas, 318 U,S. 418, 63 S Ct 667, 87 L Ed 873;(1942) Lawrence v. State Tax Commission, 287 U.S. 276,282,3, 52 S Ct 556, 76 L Ed 1102;(1931) Hamilton v. University of California, 293 U.S. 245, 79 L Ed 343, 55 S Ct 197. (1934)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 1, Section 10 of the United States Constitution states in pertinent part:

> " No State shall..... pass any ... Law impairing the Obligation of Contracts..."

N.J.S.A. 34:13A-21 states as follows:

> " Change in conditions during pendency of proceedings; prohibition without consent
>
> During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act."

N.J.S.A. 34:13A-5.3 states in pertinent part:

" Employee organizations; right to form or join; collective negotiations

Except as hereinafter provided, public employees shall have and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity;.."

N.J.S.A. 34:13A-5.4 f states as follows:

" The commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the commission issued under subsection c. or d. hereof, and its findings of fact, if based upon substantial evidence on the record as a whole, shall not, in such action, be set aside or modified; any order for remedial or affirmative action, if reasonably designed to effectuate the purposes of this act, shall be affirmed and enforced in such proceeding. "

New Jersey Court Rule 2:8-3 (Motion for Summary Disposition) states in pertinent part:

> " (b) Appellate Division. Within 15 days after the filing of the notice of appeal a party may, in accordance with R. 2:8-1 (a), move in the Appellate Division for a summary disposition on a showing that the issues involved on appeal do not require a full record or further argument. ... . "

STATEMENT OF THE CASE

This is an appeal from the final order of the New Jersey Superior Court, Appellate Division, granting a motion for summary disposition made by the New Jersey Public Employment Relations Commission (App C) and affirming the decision and order of that agency for the reasons stated therein. (Att B) Petition for certification was made to the Supreme Court of New Jersey which was denied on 19 March 1984.

The matter originates from an agreement made by the City Commissioners of the city of Lambertville on June 21,1983 with the Lambertville Policemen's Association for the year 1982. On 1 January 1983 a new form of government (Small Municipality Plan C with a mayor and four councilmen, N.J.S.A. 40:69A-139) took office in the city. The mayor, Mary Sheridan, appointed Joseph F. Shanahan as Public Safety Dir-

ector and representative of the city in negotiating the 1983 agreement. The city's position was that, because of the change in government which called for the terms of office of the three former commissioners to come to an end on 31 December 1982, they had no authority to bind the city or their successors in office past that date and therefore, the contract together with its stipulation that its term be extended "... until a successor agreement is signed." is invalid and of no effect. Based on such assumption the city made proposals to the association which were totally rejected.

On June 14,1983 the association filed a petition to initiate compulsory arbitration with the Public Employment Relations Commission.

On June 16,1983 the city filed a petition for scope of negotiations determination with the Public Employment Relations Commission to establish the validity or

invalidity of the 1982 agreement.

On August 16,1983 the Public Employment Relations Commission issued its decision on the matter directing the city to participate in arbitration proceedings without having referred to the contractual issue raised by the city.

The city appealed to the Appellate Division of the Superior Court on September 21,1983.

To the present date, the city is abiding by the terms of the 1982 agreement as it pertains to wages, hours,and other terms of employment.

RAISING THE FEDERAL QUESTION

Appellant raised the constitutional question of impairment of contract in its petition of certification to the Supreme Court of New Jersey.

THE QUESTIONS ARE SUBSTANTIAL

The basic substantive issue relative to the impairment of contract by the State of New Jersey is of great public moment having to do with the statewide administration of the New Jersey Employer-Employee Relations Act. If the State is permitted to continue to incorporate its statutory imperatives into the duration clauses of the collective agreements of the police and fire fighters contracts of the municipalities of the State without regard to the underlying validity of such contracts it will have a damaging effect on the public safety effort in the various communities.

ARGUMENT

POINT ONE

THE INTERPRETATION OF N.J.S.A. 34:13A-21 AS APPLIED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION'S DECISION TO THE INSTANT CASE AND AFFIRMED BY THE APPELLATE DIVISION IS ERRONEOUS IN THAT IT CONTRAVENES ART. 1, SECT. 10 OF THE UNITED STATES CONSTITUTION

The decision of the Appellate Division states in pertinent part:

> " We affirm the action of PERC for the reasons set forth in the Decision and Order from which this appeal is taken.... "
>
> (3a)

The decision of the Public Employment Relations Commission (PERC) states in pertinent part:

> "The City and the Association are engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq., but the City contends that these proceedings may not go forward until the validity of the duration clause is determined. .....
>
> Applying controlling statutes and case law, I find that the duration clause is legal.

N.J.S.A. 34:13A-21, part of the Interest Arbitration Law, provides:

> During the pendency of proceedings before the arbitrator, existing wages, hours, and other terms and conditions of employment shall not be changed by action of either party without consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.....
>
> .....
>
> Accordingly, with respect to any changes in terms and conditions of employment during negotiations or while an interest arbitration petition is pending, the guarantees of N.J.S.A. 34:13A-21 and N.J.S.A. 34:13A-5.3 are incorporated into any duration clause contained in a collective agreement. State v. State Supervisory Employees Ass'n., 78 N.J. 54 (1978). The duration clause before the Commission conforms with these statutory imperatives and is thus legal. !

(underlines added)

It is clear from the above language of the Decision that the basic issue raised by appellant, namely, the question of the validity or invalidity of the duration clause, has not been decided on the basis

of contract law but by an unsupported statement and reference to the statutory imperatives of irrelevant statutes. One of those so called controlling statutes N.J.S. A. 34:13A-21 has to do with changes in wages,hours, or other terms of employment during the pendency of proceedings before the arbitrator which obviously is not relevant since the facts are that no such changes have been made. The terms of the 1982 contract are being honored by the city. The other one, N.J.S.A. 34:13A-5.3 has to do with the right of public employees to form or join an employee organization which is not an issue nor ever has been.

Appellant's argument as made in its brief to the Commission included the following:

" In Board of Education v. Finne, 88 N.J. Super 91 (Law Div.1965) it states at 102:

Initially plaintiff says:

With respect to the power of a mun-

> icipal governing body or other public agency to bind its successors, a distinction is drawn between governmental and proprietary actions of such bodies. If a municipal body or public board is acting in the discharge of a governmental function or power they may not act so as to tie the hands of their successors.....
> There does not appear to be any dispute that the conduct of educational activities is a governmental activity as opposed to a proprietary venture..."
>
> (underline added)

Appellant argued that " In like manner there would appear to be no question that the operation of a police department is a governmental function, and therefore, the instant contract is one that is not binding on a successor government. To which no answer was given by respondent nor was it referred to in the PERC decision.

Appellant contends that the PERC Decision and Order and the affirmance of same by the Appellate Division overlook the basic issue which is, is there a valid contract to negotiate from or not. This is a most critical point. If the contract and its

duration clause are valid then the negotiations start with the 1982 contract as a base; if not, then they start from zero. This question can only be settled by the application of the principles of contract law and not by the statutory fiat of an administrative agency. In this case, the agency is stating in its Decision that"... the guarantees of N.J.S.A. 34:13A-21 and N.J.S.A. 34:13A-5.3 are incorporated into any duration clause contained in a collective agreement.", but legally, it is essential that there be a valid agreement present in order to give rise to the application of statutes, even if they were relevant to the instant situation which they are not. If there is no contract, as appellant contends then the statute or statutes are creating one where none exists.

In U.S. Trust Company of New York v. State of New Jersey, 431 U.S. 1,52L Ed 2d92, 97 S Ct 1505 it states at17:

> "It long has been established that the Contract Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties."

and at 22:

> " (14a) Yet private contracts are not subject to unlimited modification under the police power. The Court in Blaisdell (Home Bldg. &Loan Assn. v. Blaisdell, 290 U.S. 398, 78 LEd 413, 54 S Ct 231 (1934) recognized that laws intended to regulate existing contractual relationships must serve a legitimate public purpose. .....
> A State could not "adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them." Id., at 439, ..."

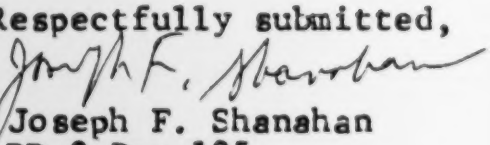
In the present instance, no evidence has been offered by respondent or the PERC that the statute or statutes were reasonable or appropriate or that they were addressed to any pertinent legitimate end. Therefore, the State is engaging in an impermissible interference with the right of contract - absent any retuttal to appellant's argument.

Such interference violates Article 1, Section 10 of the United States Constitution which states that " No State shall... pass any ... Law impairing the Obligation of Contracts."

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,



Joseph F. Shanahan
RD 2 Box 105
Lambertville, New Jersey 08530
609-397-3158
Attorney for Appellant

Date 11 June 1984

Appendices follow

APPENDIX A

SUPREME COURT OF NEW JERSEY

C-582 September Term 1983

In the Matter of 22,081

CITY OF LAMBERTVILLE,

Petitioner

and ON PETITION FOR CERTIFICATION

LAMBERTVILLE POLICEMEN'S ASSOCIATION,

AND

PUBLIC EMPLOYMENT RELATIONS COMMISSION,

Respondent.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-447-83T2 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 19th day of March, 1984.

Stephen Townsend
Clerk

APPENDIX B

ORDER ON
MOTIONS/PETITIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-447-83T2
MOTION NO. M-757-83
BEFORE PART C

JUDGES: FRITZ
FURMAN
DEIGHAN

CITY OF LAMBERTVILLE

vs.

LAMBERTVILLE POLICEMEN'S ASSOCIATION

REC'D APPELLATE DIVISION
DEC. 8,1983

FILED APPELLATE DIVISION
DEC. 8 1983

MOVING PAPERS FILED OCTOBER 17,1983
ANSWERING PAPERS FILED OCTOBER 31,1983
DATE SUBMITTED TO COURT NOVEMBER 30,1983
DATE ARGUED
DATE DECIDED DECEMBER 7,1983

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
CROSS MOTION FOR SUMMARY DISPOSITION	X		X

SUPPLEMENTAL:

The motion for summary disposition is granted. The standing of the Public Employment Relations Commission (PERC) to bring such a motion, challenged by appellant, is clearly implicit in N.J.S.A. 34:13A-5.4f. We affirm the action of PERC for the reasons set forth in the Decision and Order from which this appeal is taken. We direct compliance with that order. N.J.S.A. 34:13A-5.4f. The stay of our order of October 26, 1983 (M-461-83) is vacated.

For the Court

JOHN W. FRITZ P.J.A.D.

I hereby certify that
the foregoing is a true
copy of the original
on file in my office.

Elizabeth McLaughlin
Clerk
WITNESS, THE HONORABLE JOHN W. FRITZ PRESIDING JUDGE OF PART C, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 7TH DAY OF DECEMBER 1983.

Elizabeth McLaughlin
Clerk of the Appellate Division

APPENDIX C

P.E.R.C. NO. 84-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LAMBERTVILLE,

Petitioner,

Docket No. SN-83-140

and

LAMBERTVILLE POLICEMEN'S ASSOCIATION

Respondent

Appearances:

For the Petitioner, Joseph F. Shanahan

For the Respondent, Patrolman Dennis K. Kendig

DECISION AND ORDER

On June 20,1983, the City of Lambertville (City) filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a determination of the validity of the duration clause in the agreement between the City and the Lambertville Police-

men's Association (Association) in view of a change in the form of City government which took effect on January 1,1983. The City and the Associationare engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq., but the City contends that these proceedings may not go forward until the validity of the duration clause is determined.

The City has filed a brief and the Association has filed a letter in response. The following facts appear.

On June 21,1981, the City and the Association entered into an initial collective negotiations agreement. Article XXVII provides that " This Agreement shall be retroactive to January 1,1982 and shall continue in force and effect until December 31,1982 - or until a successor agreement is signed." Three City Commissioners signed it on behalf of the City.

On January 1,1983, a new form of government(small municipality plan C with a Mayor and Four Councimen) took office. The City's public safety director and a representative of the Association met to discuss a successor collective negotiations agreement. Prior to the exchange of contract proposals, however, the public safety director notified the Association that he considered the contract to have terminated as of January 1,1983, and that certain payments for holiday pay and personal leave would be kept in escrow pending settlement. Thereafter the Association filed an unfair practice charge against the City; this charge was withdrawn after the city Council voted to restore the payments to the police pending negotiations for a new agreement. Attempts at settlement of the contract with the aid of a PERC mediator were unsuccessful and the Association filed a Petition to Initiate Compulsory Interest Arbitration in June of 1983. There-

after the City filed the instant petition.

Pursuant to N.J.S.A. 34:13A-6(f) the full Commission has delegated authority to me to apply well-settled law to resolve scope of negotiations disputes. Applying controlling statutes and case law, I find that the duration clause is legal.

N.J.S.A. 34:13A-21, part of the Interest Arbitration Law, provides:

> " During the pendency of proceedings before the arbitrator, existing wages, hours, and other terms and conditions of employment shall not be changed by action of either party without consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

The above statute requires that existing terms and conditions of employment be maintained until negotiations for a new contract have been completed or until an interest arbitration award modifying those terms and conditions of employment has been issued. The

underlined language indicates that the rule applies even where, as here, there is a change in the employer's or employee representative's status. Moreover, the Supreme Court has required that existing working conditions be maintained during the course of negotiations for a new agreement. See Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25, 48 n. 9 (1978) and N.J.S.A. 34:13A-5.3.

Accordingly, with respect to any changes in terms and conditions of employment during negotiations or while an interest arbitration petition is pending, the guarantees of N.J.S.A. 34:13A-21 and N.J.S.A. 34:13A-5.3 are incorporated into any duration clause contained in a collective agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54(1978). The duration clause before the Commission conforms with these statutory imperatives and is thus legal.

Any further delay in continuing with interest arbitration proceedings based upon the City's contention is unwarranted and would frustrate the purpose of the interest arbitration law,in particular, and the New Jersey Employer-Employee Relations Act in general. See N.J.S.A. 34:13A-14 mandating the expeditious, effective and binding resolution of disputes in the police and fire safety services, and N.J.S.A. 34:13A-2 providing for the prompt settlement of labor disputes in the public sector. To foster this end, I will direct that the City engage in interest arbitration proceedings in accordance with the applicable statutes and regulations.[1].

ORDER

The City of Lambertville is directed to participate in interest arbitration proceedings with the Lambertville Policemen's Association in accordance with N.J.S.A. 34:13A-14 et seq. and N.J.A.C. 19:16-1.1.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED Trenton, New Jersey
August 16,1983

1. N.J.S.A. 34:13A-5.4(f) recognizes that the Commission possesses the authority to issue remedial orders in both scope of negotiations and unfair practice cases. See also Galloway Twp. Bd of Ed. v. Galloway Twp. Ed. Ass'n, supra.

APPENDIX D

IN THE SUPERIOR COURT, APPELLATE DIVISION, STATE OF NEW JERSEY

Docket No. A447-83T2
Motion No. M757-83
Before Part C

CITY OF LAMBERTVILLE

Appellant

v.

LAMBERTVILLE POLICEMEN'S ASSOCIATION

Respondent

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the City of Lambertville, New Jersey, the appellant above named, hereby appeals to the Supreme Court of the United States from the final order of the Superior Court of New Jersey, Appellate Division , affirming the action of the Public Employment Relations Commission entered in this action on December 8,1983. Petition for Certification was denied by the New Jersey Supreme Court on March 19,1984.

This appeal is taken pursuant to U.S.C.S. 1257 (2).

Joseph F. Shanahan
Attorney for appellant

Certificate of Service

I hereby certify that on this 25 day of May 1984 three copies each of this notice of appeal were mailed, first class mail with postage prepaid to Dennis Kendig, Representative of the Lambertville Policemen's Association 57 Elm Street Lambertville, New Jersey 08530, Irwin I. Kimmelman, Attorney General of New Jersey Richard J. Hughes Justice Complex Trenton, New Jersey and Don Horowitz, Esq. Public Employment Relations Commission 429 East State Street Trenton, New Jersey 08608 (This latter notification is not an admission that appellant recognizes PERC as a party)

S/ Joseph F. Shanahan

APPENDIX E

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of June 1984 three copies of the Jurisdictional Statement were delivered to Ptl Dennis Kendig Representative of respondent at Police Headquarters, Municipal Building Lambertville, New Jersey and also the same to the offices of Irwin I. Kimmelman, Attorney General of New Jersey Richard J. Hughes Justice Complex Trenton, New Jersey 08625 and to the offices of Don Horowitz, Esq. 429 East State Street Trenton, New Jersey 08608. (This latter service is not an admission that appellant recognizes PERC as a party)

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